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HAROLD B. WILLEY, Cle

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

NO. 606

INTERSTATE MOTOR FREIGHT SYSTEM, INC.,
Appellant,

v.

OTTO F. MESSNER, Secretary of the Department of Revenue of the Commonwealth of Pennsylvania and WELDON B. HEYBURN, Auditor General of the Commonwealth of Pennsylvania.

Appeal from the Supreme Court of the Commonwealth of Pennsylvania.

APPELLEES' REPLY TO APPELLANT'S BRIEF OPPOSING APPELLEES' MOTION TO DISMISS OR AFFIRM

HARRY F. STAMBAUGH,
Special Counsel.
FRANK F. TRUSCOTT,
Attorney General,
Counsel for Appellees.

State Capitol,
Harrisburg, Pa.

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The jurisdictional statement filed by appellant contained a summary statement of its position and cited eight decisions on the question of the constitutionality of the Pennsylvania statute.

Rule 12, Section 1, provides that:

"If the appeal is from a state court the statement shall include a statement of the grounds upon which it is contended the questions involved are substantial (Zucht v. King, 260 U. S. 174, 176, 177); * * *"

Appellant has since filed in the Office of the Clerk in this Court a printed brief opposing appellees' motion to dismiss or affirm. This last brief contains forty-nine pages and cites thirty-two decisions not mentioned in the jurisdictional statement.

Hence, Appellees are filing this brief in reply.

Appellant argues that:

> " * * * It is urgent that this Honorable Court clarify the principle established in the long line of cases involving taxation of interstate carriers, so that the Pennsylvania Court and other State courts will not continue to confuse an issue that is so vital to the flow of commerce between the States." (p. 8)

We submit, on the contrary, that the principles laid down by this Court in this long line of decisions are exceptionally clear and that confusion would inevitably result if appellant's arguments were adopted.

I.

The tax is an excise levied as compensation for use of the highways, and may be levied upon gross receipts of motor carriers.

Appellant contends (p. 9) that the tax is not "an excise on the use of the public highways" as the title of the Pennsylvania statute says. In support it quotes part of a sentence from *Flint v. Stone Tracey Co.*, 220 U. S. 107, 145 (1911).

We quote herewith the entire sentence, placing in italics the parts omitted by appellant:

> *"While* the mere declaration contained in a statute that it shall be regarded as a tax of a partic-

ular character does not make it such if it is apparent that it cannot be so designated consistently with the meaning and effect of the act, *nevertheless the declaration of the lawmaking power is entitled to much weight, and in this statute the intention is expressly declared to impose a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company or association, or company.* * * * " (p. 145)

We have in the Pennsylvania statute not a mere "label" or "characterization" but the actual language imposing the tax.

The title of the Act of June 22, 1931, P. L. 694, is as follows:

> "Imposing a tax on gross receipts as an excise on the use of the public highways by certain owners or operators of motor vehicles transporting passengers and property for hire."

Section 2 of the Act, 72 P. S. Section 2184, provides as follows:

> "Each company shall pay an excise tax for the use of the highways of this Commonwealth. * * * "

This Court has said that the construction placed by State courts upon the *language* of a tax statute is binding upon this Court: *Brown-Forman v. Kentucky,* 217 U. S. 563, 572 (1910); *Schuylkill Trust Co. v. Commonwealth of Pennsylvania,* 302 U. S. 506, 512, 514 (1938); *Aero Transit Co. v. Commissioners,* 332 U. S. 495, 499, 500 (1947), and *Memphis Gas Co. v. Stone,* 335 U. S. 80, 84-85 (1948).

In the Memphis Gas case, Mr. Justice Reed said:

> "* * * As we are bound by the construction of the state statute by the state court, it is idle to suggest that the tax is on 'the privilege of engaging in interstate business.' * * * *" (pp. 84-85)

In *Spector Motor Service v. O'Connor,* 340 U. S. 602, 608-609 (1951), this Court adopted the construction of the tax statute made by the State court.

Appellant contends (p. 9) that it must affirmatively appear that the tax was levied only as compensation for the use of the highways.

There can be no doubt that the Pennsylvania statute imposed a tax as compensation for use of its highways. As already stated the title and Section 2 both expressly declare that the tax is "for the use of the highways".

This Court has also included in the permissible purpose expenses for regulating motor traffic and providing safety.

This Court has also said that the purpose:

> "* * * may be indicated by the nature of the imposition, such as a mileage tax directly proportioned to the use, Interstate Busses Corp. v. Blodgett, 276 U. S. 245, * * *." (*Interstate Transit, Inc., v. Lindsey,* 283 U. S. 183, 186 (1931))

In *Aero Transit Co. v. Commissioners,* 332 U. S. 495 (1947), this Court said:

> "The present taxes on their face are exacted 'in consideration of the use of the highways of this

state,' that is, they are laid for the privilege of using those highways. * * *" (p. 503)

In *Capitol Greyhound Lines v. Brice,* 339 U. S. 542, 547 (1950), Mr. Justice Black speaks of:

"* * * such key factor as mileage * * *" (p. 547)

Appellant endeavors (pp. 10-15) to brush aside four decisions of this Court which declare expressly that the tax is a compensation for the use of highways and the appropriation of the proceeds "is not a matter which concerns the plaintiffs" (carriers).

In addition to the opinions quoted by appellant, we quote here from two other decisions.

In *Aero Transit Co. v. Commissioners,* 332 U. S. 495 (1947), this Court further said:

"* * * Those cases did not hold that all state exactions for the privilege of using the state's highways are valid only if their proceeds are required to go directly and exclusively for highway maintenance, policing and administration. Both before and after the Interstate Transit decision this Court has sustained state taxes expressly laid on the privilege of using the highways, as applied to interstate motor carriers, declaring in each instance that it is immaterial whether the proceeds are allocated to highway uses or others. Clark v. Poor, supra, at 557; Morf v. Bingaman, supra, at 412." (p. 504)

Commenting on *Morf v. Bingaman,* 298 U. S. 407 (1936), appellant states that the fee imposed was "modest", and that the State did pay a part of its high-

way costs from the proceeds of a property tax. However, this Court definitely said:

> "Nor is it important that a part of the fees collected is not devoted directly to highway maintenance, * * *" (p. 412)

Furthermore, if the tax were held to be upon the privilege of engaging in interstate commerce, "modesty" would not be a saving virtue nor would application of a part to highways prevent the tax from being unconstitutional.

In *Dixie Ohio Co. v. Commission,* 306 U. S. 72 (1939), this Court said:

> "* * * The exaction is not to be deemed offensive to the commerce clause merely because the State, in the conduct of its fiscal affairs, chooses to use part or all of the proceeds for purposes other than the construction, improvement, or maintenance of its highways. * * *" (p. 77)

An interstate carrier pays the same tax and receives the same benefit from the Pennsylvania highways whether the tax is applied to the General Fund or to the Motor License Fund.

Appellant argues (p. 18) that the Pennsylvania Legislature has long and consistently adhered to the practice of allocating the proceeds of taxes levied to compensate for maintaining and policing highways to the Motor License Fund. Counsel, however, is able to cite only two taxes, the liquid fuels tax and the motor vehicle registration fees. These taxes are definitely allocated to the Motor License Fund by the amendment to the Pennsylvania Constitution which was adopted by

the people on November 6, 1945, and became Section 18 of Article IX.

The original Act of June 22, 1931, P. L. 694, however, definitely appropriated all gross receipts of intrastate commerce to the General Fund, and not the Motor License Fund, and this allocation has never been changed.

We further call attention to the fact that in *Aero Transit Co. v. Commissioners,* 332 U. S. 495 (1947), prior to 1941, the fees collected were credited to the "Motor Carrier Fund", and that after 1941 they were allocated to the state's *General Fund.* Also, the rate of tax was ½ of 1% *quarterly* or 2% annually of the carriers gross operating revenue, and not ½ of 1% annually, as implied by appellant (p. 13).

In *Interstate Transit, Inc. v. Lindsey,* 283 U. S. 183, cited on page 19 of appellant's brief, the tax was graduated according to the carrying capacity of the bus and not according to mileage or use of the highway.

Appellant comments (p. 21) on the fact that the Pennsylvania amendment Act of 1951 eliminated credits for vehicle registration fees and excise taxes paid to a city. Even so, the tax is not an unreasonable compensation.

This Court has sustained a tax of 2% on gross receipts (*Aero Transit Co. v. Commissioners,* 332 U. S. 495, 507 (1947)), or 2½ times the 8 mills tax imposed by the Pennsylvania statute.

Appellant did not allege or prove what cities imposed excise taxes or the rates thereof, or the rates of the regis-

tration fees. If the city taxes and the State taxes together amounted to an excessive rate, the city tax, and not the State tax, would be invalid. The right of a State to levy a tax cannot be lessened by the action of a city in imposing a similar tax.

Nor does the tax collected by a city effect the right of the State to impose the tax in this case, as was said by Mr. Justice Stone in *Interstate Busses Corp. v. Blodgett,* 276 U. S. 245 (1928):

> "That appellant is already contributing to highway maintenance is not in itself significant, for the state does not exceed its constitutional power by imposing more than one form of tax as a charge for the use of its highways in interstate commerce. It is for appellant to show that the aggregate charge bears no reasonable relation to the privilege granted." (pp. 251-252)

To the same effect are *Dixie Ohio Co. v. Commission,* 306 U. S. 72, 78 (1939); *Aero Transit Co. v. Commissioners,* 332 U. S. 495, 506-507 (1947).

On page 23, appellant argues that the tax added by the amending Act of 1951 was intended solely to meet a need for general revenue.

As was said in *Magnano Co. v. Hamilton,* 292 U. S. 40 (1934):

> "* * * Collateral purposes or motives for a legislature in levying a tax of a kind within the reach of its lawful power are matters beyond the scope of judicial inquiry. McCray v. United States, supra, 56-59. * * *" (p. 44)

As was said by Mr. Justice Holmes in *Alaska Fish Co. v. Smith,* 255 U. S. 44 (1921):

> "* * * The acts must be judged by their contents not by the allegations as to their purpose in the complaint. * * *" (p. 49)

Motor truck carriers must pay this tax as compensation for use of highways, irrespective of how much money the Commonwealth has in its Treasury, or to what particular fund or funds the tax money is credited.

Otherwise, if a state has paid in full the cost of construction and has ample funds for the maintenance of all of its highways, a foreign motor carrier could use the roads of the state and wear them out without having to pay anything.

Foreign motor truck owners are earning tremendous sums by operating over Pennsylvania highways. Pennsylvania has expended hundreds of millions of dollars in the construction and maintenance of those highways and is entitled to ask compensation from those who use and receive the benefits of them.

The amount of money in the Motor License Fund is wholly irrelevant. Pennsylvania can prudently expend every dollar in that fund in constructing new roads and reconstructing old roads, especially widening, providing hard surface and improving grades and eliminating curves on existing roads.

Appellant's Bill of Complaint avers (paragraph 12) that the Motor License Fund, on June 1, 1951, amounted to $48,051,540. However, on December 31, 1951, this fund had a balance in bank of less than $10,000,000 and

had carried over unpaid construction obligations amounting to $101,414,000. During the period from January 1 to June 1, the fund collects the fees for owners' licenses and operators' licenses and other taxes, and always has a large cash balance on June 1, before large expenditures for maintenance and construction begin.

For the same fiscal year, the estimate of the cost of maintenance of the Commonwealth's 41,000-mile highway system is $32,000,000.

The Department of Highways estimated that for the calendar year 1952, it would spend over $181,000,000 and at the end of that year it would carry over $121,000,000 of unpaid construction obligations, and have a bank balance of approximately $10,000,000.

The cost of construction and maintaining highways in Pennsylvania is exceptionally high. The State is traversed from north to south by mountain ranges and rivers, and the State has to construct and maintain numerous bridges, tunnels and large cuts and fills.

Appellant's statement (p. 27) that interstate carriers have more than paid their way or have paid the way of others, is not supported by the record. We further suggest that a rule that the validity of the tax depended upon the fund to which it was appropriated, would not furnish a sure test. After an appropriation has been made, moneys may be transferred from one fund to another, if necessary, by legislation. Moneys in the General Fund could be freely appropriated to construction and maintenance or other expenses in connection with highways.

The argument made on pages 24-27 would compel this Court to make an audit of the books of the State Treasurer of Pennsylvania, in order to determine whether interstate carriers were paying an excessive tax. The only fair and dependable test is an objective one—the one adopted by this Court—whether the tax imposed requires a carrier to pay more than a reasonable compensation for the use of the highways.

The Legislature can exact a reasonable compensation for the use of its highways, and no more, and irrespective of what use is made of the various proceeds of the taxes.

Appellant's statement (p. 27) that "not one penny of this tax revenue will or can be used for highway purposes", is not correct. This money may be appropriated from the General Fund for the benefit of highways.

The unpredictable increase in size, weight and carrying capacity of motor trucks has rendered a large proportion of the roads built in the 1920's and the early 1930's inadequate. Large sums of money had to be expended, and have been expended, in rebuilding and strengthening these Pennsylvania highways. In the case of many, the cost was increased by the fact that such roads were not built to carry modern trucks and loads.

During the five years ending in 1952, Pennsylvania has expended more than $500,000,000 for the construction, rebuilding, widening and resurfacing of State highways.

The decisions cited on pages 28-29 are readily distinguishable. In the *Sprout* case, the tax was based on

seating capacity irrespective of whether it traveled over and so used the streets for five or five thousand miles.

The *Interstate Transit* case was based on carrying capacity, and not on use of highways. In the *McCarroll* case the tax was based on the amount of gasoline carried, irrespective of miles traveled.

II.

Pennsylvania may collect this tax from the gross receipts of transportation over the Pennsylvania Turnpike.

Appellant's point 5 (p. 28) is relevant only as to the Interstate Motor Freight System's appeal. In the appeal of Shirk's Motor Express Corporation, the tax was not imposed on gross receipts from transportation on the Pennsylvania Turnpike.

The power of Pennsylvania to tax the proceeds of transportation over the Turnpike has already been discussed in appellees' statement opposing jurisdiction in the appeal of Interstate Motor Freight System.

As the Supreme Court of Pennsylvania said:

> "The Turnpike Commission holds the legal title to the Turnpike, but only in its capacity as an instrumentality of the Commonwealth: Act of May 21, 1937, P. L. 774, Section 4, 36 P. S. § 652d. The Turnpike is one of the public highways which cross the State of Pennsylvania in the same general locality. Two others are the William Penn Highway and the Lincoln Highway." (375 Pa. at p. 461)

This construction of the Pennsylvania Turnpike Act, we submit, is binding on this Court. The same is true, we also submit, of the other Pennsylvania cases cited in appellees' statement opposing jurisdiction, which held that the Pennsylvania Turnpike Commission was part of the Commonwealth of Pennsylvania.

In addition to the points made in the statement opposing jurisdiction, we submit the following:

The members of the Turnpike Commission are the Pennsylvania Secretary of Highways, ex officio, and four other members appointed by the Governor.

Each member is required to take the oath prescribed by the Pennsylvania Constitution, execute a bond to be approved by the Governor, and filed in the office of the Secretary of the Commonwealth of Pennsylvania.

Section 4 of the Pennsylvania Turnpike Act provides that all contracts relating to construction of the turnpike, tunnels and bridges shall be approved by the Department of Highways and the construction shall be under the supervision of the Department of Highways.

Section 5 provides that with the approval of the Department of Highways, the Commission is authorized to purchase tunnels, rights-of-way and other interests in lands.

Section 6 provides that any application to acquire property by eminent domain and the proceedings therein, shall be made by the Commission, through the Department of Justice of Pennsylvania.

Section 8 provides that the bonds to be issued by the Commission "shall be bonds of the Commonwealth."

Section 12 provides that after completion the turnpike shall be maintained and repaired by and under the control of the Commission, through the Department of Highways.

Of special significance is the provision in Section 11 that any property acquired or used by the Commission shall, at all times, be free from taxation. This is a clear recognition by the Legislature that the property acquired and used in the turnpike is "public property used for public purposes." Under Sections 1 and 2 of Article IX of the Pennsylvania Constitution such property could not be exempt unless it were "public property used for public purposes."

The Legislature could not constitutionally confer upon or delegate to any private corporation or legal entity or any other person its governmental powers or create the same an instrumentality of the Commonwealth. Such powers can only be conferred upon and exercised by an official commission or board created by the Legislature for governmental purposes.

When the bonds are paid, the turnpike, without any conveyance or other legal formality, shall become a part of the system of State Highways. Likewise, without any conveyance or other formality, all of the funds, equipment and other property of the commission shall vest in the Department of Highways. This provision demonstrates that the Commonwealth was at least the equitable or ultimate owner of the turnpike from the beginning and after the bonds are paid, it is the legal owner. While the bonds are outstanding, a security title is held by the commission for the protection of the bondholders.

In appellees' statement opposing jurisdiction will be found a discussion of the following further points:

(II) Voluntary payment of tolls by the appellant does not amount to a discrimination against it or a denial of the equal protection of the laws.

(III) Appellant has failed to prove that the aggregate amount of the gross receipts tax and the tolls on the turnpike is in excess of a fair compensation for the use of the turnpike.

In the note to page 33, appellant argues that it is doubtful whether the use of the Pennsylvania Turnpike by Interstate Motor Freight System was optional. If it was not, the burden was certainly on appellant to establish that fact.

Appellant has made no allegation and submitted no proof in this record that it was required to use the route of the Pennsylvania Turnpike. The Turnpike is a non-access highway, and makes stops at only a few selected points of entrance or departures. No freight is picked up or delivered along the Turnpike.

A great many competing truck companies travel over the Turnpike without receiving or delivering, but merely transporting.

We see no reason why the Interstate Commerce Commission would not permit any interstate truck line to travel over the Turnpike.

III.

The amendment of December 27, 1951, P. L. 1761, in abolishing certain credits or deductions retroactively, is not unconstitutional.

Appellees refer to this same heading and the discussion thereunder in their statement opposing jurisdiction in the Shirks Motor Express Appeal.

This question is ruled by the decision of this Court in *Welch v. Henry,* 305 U. S. 134 (1938), already discussed in appellees' statement opposing jurisdiction.

In the *Welch* case, as in the instant case, complaint was made that the Act of Congress repealed retroactively the right to make certain deductions, before calculating the tax. The *Welch* case squarely held that such retroactive appeal of the right to deductions was not unconstitutional.

Indeed, this Court has said that the extent to which deductions shall be allowed in calculating a tax depends entirely upon legislative grace.

In *New Colonial Co. v. Helvering,* 292 U. S. 425 (1934), this Court said:

> "The power to tax income like that of the new corporation is plain and extends to the gross income. Whether and *to what extent deductions shall be allowed depends upon legislative grace;* and only as there is clear provision therefor can any particular deduction be allowed." (Emphasis supplied) (p. 440)

To the same effect are:

Helvering v. Independent Life Ins. Co., 292 U. S. 371, 381 (1934)

Rockford Life Ins. Co. v. Commission, 292 U. S. 382, 384 (1934)

I Merten's Law of Federal Income Taxation, Sec. 4.14, note 40.

Appellant also argues (pp. 43-46) that the cases upholding statutes imposing a tax retroactively are limited to taxes *upon net income.*

In the *Welch* case, Justice Stone fully considered the argument that the taxpayer could not anticipate or provide against a retroactive increase in tax, and said that it was important that the Legislature have the opportunity to revise tax laws retroactively, in the light of events occurring during the taxable period. Mr. Justice Stone said:

> " * * * Without that opportunity accommodation of the legislative purpose to the need may be seriously obstructed if not defeated. We cannot say that the due process which the Constitution exacts denies that opportunity to legislatures; that it withholds from them, more than in the case of a prospective tax, authority to distribute the increased tax burden in the light of experience and in conformity with accepted notions of the requirements of equal protection; or that in view of well established legislative practice, both state and national, taxpayers can justly assert surprise or complain of arbitrary action in the retroactive apportionment of tax burdens to income at the first opportunity after

knowledge of the nature and amount of the income is available. * * *" (pp. 149-150)

The decisions sustaining the retroactive tax are not limited to taxes on income. In *Hecht v. Malley,* 265 U. S. 144 (1924), the Revenue Act of 1918, which was not approved until February 24, 1919, imposed a capital stock tax upon corporations and associations for the year July 1, 1918 to June 30, 1919.

Against the objection that this statute was retroactive, this Court held that the statute was constitutional.

This Court has frequently upheld statutes imposing taxes retroactively, although the imposition could not have been anticipated or avoided by the taxpayer.

In *Billings v. United States,* 232 U. S. 261 (1914), the Supreme Court upheld a retroactive tax imposed by Congress upon the "use" of foreign-built yachts.

In this *Billings* case, a tax was imposed on the use of the yacht after the yacht had been used. If the owner had anticipated the enactment of such a tax, he might have bought an American-built yacht or refrained from using his foreign-built yacht.

In *Wickard v. Filburn,* 317 U. S. 111 (1942), an act of Congress which increased the penalty upon "Farm Marketing Excess" and included in that category wheat, which previously had not been subject to penalty, was held not invalid as retroactive legislation, although the penalty was applied to wheat which was planted and growing before the statute was enacted.

An analogy is furnished by the cases in which a foreign corporation has complied with the registration laws

of a state and built up a business before a new and more drastic tax is imposed upon it. In those cases, the foreign corporation has objected that it would not have entered the state if it could have anticipated the heavier tax and, therefore, the imposition of such a tax deprives the corporation of its property without due process of law.

In *Underwood Typewriter Co. v. Chamberlain,* 254 U. S. 113 (1920), the foreign corporation's contention that it had made large investments in the state before the new law was enacted and that it could not withdraw from the state and avoid the tax, was disregarded.

To the same effect is *Cheney Brothers Co. v. Massachusetts,* 246 U. S. 147, 156-157 (1918).

In *Wagner v. Baltimore,* 239 U. S. 207 (1915), the Supreme Court held that the City of Baltimore could levy an assessment upon real estate for benefits from the improvement of a highway, although the improvement had been completed and paid for by the city some years before any effort to assess, and the proceeds of the assessment were to be used for other public purposes.

Respectfully submitted,

HARRY F. STAMBAUGH,
Special Counsel.

FRANK F. TRUSCOTT,
Attorney General,
Counsel for Appellees.

APPELLANT'S PETITION FOR REHEARING

TO THE HONORABLE, THE CHIEF JUSTICE AND THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

INTERSTATE MOTOR FREIGHT SYSTEM, INC., your Petitioner, by its Attorneys, Frank A. Sinon, and Rhoads, Sinon & Reader, and George S. Norcross, and Warner, Norcross & Judd, respectfully submits that it has been aggrieved by the Order of your Honorable Court, rendered herein on the 12th day of April, 1954, in the respects hereinafter set forth, and prays for a rehearing and reconsideration of such matter.

1. An appeal to your Honorable Court in this case was allowed by the Chief Justice of the Supreme Court of Pennsylvania, by Order dated January 30, 1954. The Appellees filed a Statement Opposing Jurisdiction and a Motion to Dismiss this Appeal. Your Petitioner filed a brief opposing Appellee's Motion to Dismiss.

2. On April 12, 1954, your Honorable Court made the following Order:

> "*PER CURIAM:* The motions to dismiss are granted and the appeals are dismissed for the want of a substantial federal question.
>
> Mr. Justice Jackson took no part in the consideration or decision of these cases."

3. Your Petitioner respectfully submits that this case does present a substantial federal question, for the reasons hereinafter set forth.

4. The State statute here involved imposes a tax upon the gross receipts of interstate carriers by motor vehicle. Not one cent of the taxes thus exacted can be used directly, indirectly, or in practical operation and effect for highways purposes. Neither can any of the tax moneys collected from non-highway users under any other taxing statutes be used for highway purposes. Further, this statute departs from the Legislature's consistent practice of allocating revenue from highway purpose taxes to highway funds. Further, the tax is not measured in accordance with highway user and is levied upon receipts from interstate commerce across the Pennsylvania Turnpike, as to which the State is under no obligation to levy any form of taxation, or to make any appropriations, or to incur any expense. Despite all this, the Supreme Court of Pennsylvania held that this tax was levied as a charge for the use of its highways and was a valid taxation of purely interstate commerce.

5. The tax here levied against interstate carriers goes beyond any previous attempt by a State to tax that commerce which has been sustained by your Honorable Court and falls in the category of the taxing statutes declared violative of the Commerce Clause in *Interstate Transit, Inc. v. Lindsey,* 283 U.S. 183 (1931), and *Ingels v. Morf,* 300 U.S. 290, 295 (1937).

6. Your Petitioner believes that the instant case marks a departure from the principles established in the long line of cases dealing with State taxation of interstate motor carriers, from *Kane v. New Jersey,* 242 U.S. 160 (1916), to *Central Greyhound Lines, Inc. v. Mealey,* 334 U.S. 653 (1948); and that, at the very least, the vital questions posed by this taxing statute under the Commerce Clause are such that your Hon-

orable Court should take jurisdiction of the case and clarify the applicable principles and delimit the area within which such taxes may be imposed.

7. The effect of this decision is to permit the taxation of interstate vehicular carriers above and beyond, in kind and degree, the taxation of any other type of interstate commerce and to pave the way for all States to impose ever more burdensome tax levies upon the hundreds of motor carriers who constitute a major segment of the flow of commerce. This instant attempt to tax interstate commerce, as such, should be aborted before it spawns a plethora of similar attempts by other States, with resultant extensive litigation and depressing of the vehicular transportation business.

8. In the current term of court your Honorable Court took jurisdiction of a case involving State taxation of interstate commerce, in the case of *Michigan-Wisconsin Pipe Line Co. v. Calvert, et al,* 347 U.S. 157, 74 S. Ct. 396 (decided February 8, 1954). In this opinion your Honorable Court reviewed the cases and clarified the principles with respect to taxing local activities related to interstate commerce, and invalidated the taxing statute in question.

9. The Supreme Court of Pennsylvania, in *Roy Stone Transfer Corporation v. Otto F. Messner, et al,* Pa. , A. 2d (No. 31 May term, 1953. Decided March 24, 1954), invalidated a statute imposing "a property tax upon the income" of corporations engaged in interstate vehicular transportation. This was a unanimous decision, with three judges concurring in the result. The opinion in this case placed great reliance upon the *Michigan-Wisconsin Pipe Line Case,* supra, and quoted at length from

that opinion. Had this latter decision been handed down before the Pennsylvania Supreme Court decided the instant case, it may well have affected the result.

10. In the current term of court your Honorable Court also took jurisdiction of a case involving a State tax levied on gross receipts from interstate commerce, in *Railway Express Agency, Inc. v. Commonwealth of Virginia,* U.S. , 74 S. Ct. 558 (decided April 5, 1954). Here this Honorable Court invalidated a Virginia tax on the gross receipts from the interstate operations of express companies; and the opinion by Mr. Justice Jackson reviewed a number of the cases and clarified the principle that the local incidents that are an integral part of interstate business are not adequate grounds for a State license, privilege or occupation tax.

11. Your Petitioner firmly believes that the federal questions presented in the instant case are just as substantial, if not more so, as those present in the above cases and that here, also, your Honorable Court should take jurisdiction and clarify the principles governing the taxation of purely interstate vehicular transportation.

12. Your Petitioner respectfully submits that, since Mr. Justice Jackson delivered the opinion of the Court in *Railway Express Agency, Inc. v. Commonwealth of Virginia,* supra, to be completely fair and equitable to your Petitioner Mr. Justice Jackson should be given an opportunity to participate in the determination as to whether this appeal shall be allowed.

WHEREFORE, your Petitioner respectfully prays that your Honorable Court reconsider its action in this matter, at such time as Mr. Justice Jackson, together with

the Chief Justice and the other Justices, can participate in the determination.

Respectfully submitted,

(Signed) *Frank A. Sinon*

FRANK A. SINON.

(Signed) *Rhoads, Sinon & Reader*

RHOADS, SINON & READER,
State Street Building,
Harrisburg, Pennsylvania.

(Signed) *George S. Norcross*

GEORGE S. NORCROSS.

(Signed) *Warner, Norcross & Judd*

WARNER, NORCROSS & JUDD,
Michigan Trust Building,
Grand Rapids, Michigan,
Counsel for Appellant.

CERTIFICATE

I, FRANK A. SINON, hereby certify that I am one of the Counsel for the Appellant herein and that this Petition for Rehearing is presented in good faith and not for the purpose of delay.

(Signed) *Frank A. Sinon*

FRANK A. SINON.

that opinion. Had this latter decision been handed down before the Pennsylvania Supreme Court decided the instant case, it may well have affected the result.

10. In the current term of court your Honorable Court also took jurisdiction of a case involving a State tax levied on gross receipts from interstate commerce, in *Railway Express Agency, Inc. v. Commonwealth of Virginia,* U.S. , 74 S. Ct. 558 (decided April 5, 1954). Here this Honorable Court invalidated a Virginia tax on the gross receipts from the interstate operations of express companies; and the opinion by Mr. Justice Jackson reviewed a number of the cases and clarified the principle that the local incidents that are an integral part of interstate business are not adequate grounds for a State license, privilege or occupation tax.

11. Your Petitioner firmly believes that the federal questions presented in the instant case are just as substantial, if not more so, as those present in the above cases and that here, also, your Honorable Court should take jurisdiction and clarify the principles governing the taxation of purely interstate vehicular transportation.

12. Your Petitioner respectfully submits that, since Mr. Justice Jackson delivered the opinion of the Court in *Railway Express Agency, Inc. v. Commonwealth of Virginia,* supra, to be completely fair and equitable to your Petitioner Mr. Justice Jackson should be given an opportunity to participate in the determination as to whether this appeal shall be allowed.

WHEREFORE, your Petitioner respectfully prays that your Honorable Court reconsider its action in this matter, at such time as Mr. Justice Jackson, together with

the Chief Justice and the other Justices, can participate in the determination.

Respectfully submitted,

(Signed) *Frank A. Sinon*

FRANK A. SINON.

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